

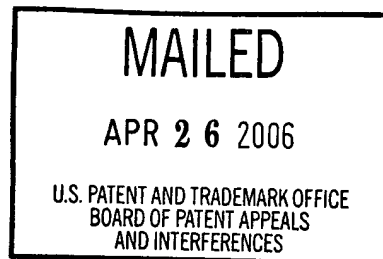
The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

## UNITED STATES PATENT AND TRADEMARK OFFICE

### BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte GREGORY W. EASLEY,  
EDMUND A. MOULTON,  
JIM SCHOENBURG, and  
TIM ARNOLD

Application No. 09/819,603



### ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on March 27, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

On May 14, 2005, appellants filed an Appeal Brief under the rules set forth in 37 CFR § 41.37(c), which states in part:

(ix) Evidence appendix. An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include

copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) Related proceedings appendix. An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

A review of the application reveals that these two sections are missing from the Appeal Brief filed May 14, 2005. Accordingly, the Appeal Brief does not comply with the new rules under 37 CFR § 41.37(c). It is required that a supplemental Appeal Brief be submitted that is in compliance with 37 CFR § 41.37(c). For more information on the Board's new rules, please see the web page entitled "More Information on the Rules of Practice Before the BPAI," Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>

Additionally, the Information Disclosure Statement dated December 10, 2004 needs to be considered by the Primary Examiner with respect to compliance with the criteria set forth in 37 CFR §§ 1.97 and 1.98. A written communication notifying appellants of the Primary Examiner's decision is required.

Accordingly, it is

ORDERED that the application is returned to the examiner to:

- (1) hold the Appeal Brief filed on May 14, 2005 defective;
- (2) notify appellants to file a supplemental Appeal Brief in compliance with 37 CFR § 41.37;
- (3) consider the supplemental Appeal Brief, and if necessary, vacate the Examiner's Answer mailed October 25, 2005, and issue a revised Examiner's Answer in accordance with the rules effective September 13, 2004;

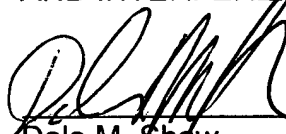
(4) have a complete copy of the substitute Appeal Brief and any subsequent Examiner's Answer scanned into the record;

(5) consider the Information Disclosure Statement filed December 10, 2004;

(6) provide written notification to appellants of said consideration; and

(7) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES



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